

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOBBY LEE TAYLOR,

Petitioner,

v.

CASE NO. 2:16-CV-13400
HON. GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

THOMAS MACKIE,

Respondent.

**OPINION AND ORDER DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE MOTION FOR A CERTIFICATE OF APPEALABILITY
AND MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL TO
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

On June 20, 2017, this Court denied petitioner's application for a writ of habeas corpus and further denied him a certificate of appealability or leave to appeal *in forma pauperis*.

On June 29, 2017, petitioner filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit.

On July 26, 2017, petitioner filed a motion for a certificate of appealability and a motion to proceed *in forma pauperis* on appeal. For the reasons that follow, the Court will further order that petitioner's motion for a certificate of appealability and the motion to proceed *in forma pauperis* on appeal to be transferred to the United States Court of Appeals for the Sixth Circuit.

This Court notes that the proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). Petitioner has apparently done so in this case, although he has filed his motion with the district court, rather than the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of appealability to be transferred to the United States Court of Appeals for the Sixth Circuit.

The Court will also order the Clerk of the Court to transfer petitioner's motion to proceed *in forma pauperis* on appeal to the Sixth Circuit. It is well settled that the filing of a notice of appeal transfers jurisdiction over the merits of the appeal to the appellate court. *Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992). Petitioner's notice of appeal divests this Court of jurisdiction to consider his motion that he be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. See *Glick v. U.S. Civil Service Com'n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983); *Brinton v. Gaffney*, 560 F. Supp. 28, 29-30 (E.D. Pa. 1983). Because jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, petitioner's motion to proceed *in forma pauperis* on appeal would be more appropriately addressed to the Sixth Circuit.

IT IS HEREBY ORDERED that the Clerk of the Court transfer the “Motion For a Certificate of Appealability” [Dkt. # 19] and the “Application to proceed without prepaying fees or costs on appeal” [Dkt. # 18] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

Dated: November 2, 2017

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 2, 2017, by electronic and/or ordinary mail and also on Bobby L. Taylor #226121, Carson City Correctional Facility, 10274 Boyer Road, Carson City, MI 48811.

s/Marcia Beauchemin
Deputy Clerk